

DEPARTMENT OF STATE REVENUE

04-20191058R.ODR

**Final Order Denying Refund: 04-20191058R
Gross Retail Tax
For the Years 2016, 2017, and 2018**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Out-of-state Optical Company was not entitled to an additional refund of either 2016 or 2018 sales tax because the Department correctly computed the amount of tax Optical Company was eligible to receive.

ISSUE

I. Gross Retail Tax - Refund Calculation.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-2-2; IC § 6-2.5-6-13.

Taxpayer argues that it is entitled to an additional refund of sales tax because the Department miscalculated the amount of its original refund amount.

STATEMENT OF FACTS

Taxpayer is an out-of-state optical company which collects, files for, and pays Indiana gross retail (sales) tax. Taxpayer submitted a form GA-110L Claim for Refund dated April 2019. Taxpayer sought a refund of approximately \$40,000 in 2016, 2017, and 2018 sales tax it had previously forwarded the Indiana Department of Revenue ("Department"). Taxpayer explained that it had already refunded the \$40,000 sales tax to certain of its customers.

The Department refunded in full the amounts claimed for the years 2016 and 2017. However, the Department refunded only a portion of the 2018 requested refund. Taxpayer sought a 2018 refund of approximately \$20,000 but the Department refunded approximately \$17,000.

In a letter dated May 2019, the Department explained the discrepancy: "[a]mount on the claim for year 2018 sales tax is different than what was on [the] invoices." Taxpayer disagreed with the Department's decision denying a portion of the 2018 refund and submitted a protest to that effect. However, Taxpayer states that its protest relates to the 2016 sales tax refund and not 2018. This Final Order Denying Refund results.

I. Gross Retail Tax - Refund Calculation.

DISCUSSION

As requested, the Department granted Taxpayer's 2016 and 2017 refund claims in full but denied Taxpayer's 2018 refund claim in part. Nonetheless, Taxpayer believed it was entitled to an additional 2016 refund amount.

The issue is whether Taxpayer has established it is entitled to an additional refund of 2018 (or 2016) sales tax.

Taxpayer predicates its refund request on the amount credited or refunded to its exempt customers. Taxpayer calculated that it had credited or refunded approximately \$20,000 in 2018 sales tax and provided customer invoices and/or credit memos to that effect. Taxpayer also states that it credited or refunded approximately \$12,000 in 2016 sales tax and provided customer invoices and/or credit memos to that effect.

Indiana imposes a sales tax on retail sales. IC § 6-2.5-2-1. The sales tax is measured by the gross retail income received by the retail merchant from the purchaser. IC § 6-2.5-2-2. Under the circumstances described by Taxpayer, Taxpayer was acting as a "retail merchant" when it sold its optical products to its customers.

IC § 6-2.5-2-1(b) delineates the relationship between the buyer and seller in each retail transaction.

The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Indiana law allows the retail merchant an opportunity to obtain a refund of sales tax collected from the merchant's customers and forwarded to the Department. IC § 6-2.5-6-13 provides the grounds under which a merchant may seek a refund of tax.

A person is entitled to a refund from the department if: (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person; (2) the retail merchant remits the taxes to the department; (3) the retail merchant does not refund the taxes to the person; and (4) the person properly applies for the refund under the refund provisions contained in [IC 6-8.1-9](#).

In this case, Taxpayer sold its products to a customer which thereafter established that it was entitled to purchase the products without paying sales tax. The customer is an Indiana eye care center which provided Taxpayer a copy of its exemption certificate.

There is an apparent series of discrepancies in Taxpayer's protest. Taxpayer states it requested a refund of approximately \$14,000 in 2016 sales tax and complains that it only received a refund of approximately \$12,000; Taxpayer is mistaken because it originally requested approximately \$12,000 in 2016 sales and not the \$14,000 it now cites. Taxpayer is again mistaken because it itself admits that it received exactly the amount of 2016 sales tax (\$12,000) it originally requested.

In its protest letter, Taxpayer states the Department erred in its response letter and that the discrepancy of which it complains related to its 2016 refund and not the 2018 cited in the Department's May 2019 response. Taxpayer is again mistaken. In its original refund request, Taxpayer requested a \$20,000 2018 refund amount. In its protest letter, Taxpayer states it requested approximately \$17,000 and that it received exactly the amount requested; it didn't. The Department's May 2019 letter was correct. Taxpayer received from the Department an amount of 2018 tax less than the amount requested. Moreover, the Department's 2018 calculation was correct. The amount of 2018 sales tax refunded Taxpayer is exactly the amount its documentation supports. Taxpayer credited its exempt customer approximately \$17,000 in 2018 sales tax and Taxpayer - in turn - received from the Department that amount.

As to either the 2016 or 2018 sales tax refunds requested and granted, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

August 12, 2019

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